

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2015 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BAI SAKARBAI DEVRAJ

Versus

IBRAHIM ABDUL GANIBHAI PANKHID

Appearance:

MS ARCHNA AMIN FOR MR KG SHETH for Petitioner

MR NS DESAI for Respondent

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 13/10/1999

ORAL JUDGEMENT

1. This tenant's Civil Revision Application under Section 29 (2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('the Act' for short hereinafter) is filed against the judgment and decree dated 10.12.1980 recorded in Regular Civil Appeal No. 75 of 1978 by the learned Joint District Judge, Amreli, whereby the decree of eviction of the suit premises was passed by allowing the appeal and thereby the judgment

and decree dated 31.8.1978 recorded in Regular Civil Suit No. 183 of 1977 by learned Joint Civil Judge (J.D.), Amreli dismissing the suit, came to be reversed.

2. Petitioner is the original defendant-tenant whereas respondent is the original plaintiff-landlord and in this judgment they are hereinafter referred to as the 'plaintiff' and 'defendant' respectively for the sake of convenience.

3. The brief facts giving rise to this Civil Revision Application are that:

3.1. The plaintiff filed suit against the defendant for actual and vacant possession of the suit premises on the ground of arrears of rent from 1.2.1972 to 28.2.1977. The case of the plaintiff before the trial court was that the defendant kept the suit premises on lease on payment of monthly rent of Rs.4/- and executed rent note in which she has agreed to pay all municipal taxes in respect of the suit premises. It was the case of the plaintiff that by not paying the rent from 1.2.1972 onwards the tenant has committed default and in spite of repeated demands she neglected and failed to pay rent and, therefore, notice dated 22.10.1975 was served upon the tenant to pay the arrears of rent and to vacate the premises in question as the tenant has committed default in payment of rent. Since the defendant has failed to comply with the notice, the plaintiff filed the suit for eviction on the ground of non-payment of arrears of rent.

3.2. The suit was contested by the defendant-tenant by filing written statement wherein inter alia it was contended that on some day the plaintiff had taken away her thumb impression on a stamp paper the contents of which was not read over to her. It was denied that she was not paying rent regularly. It was contended that no rent receipt was passed. The tenant also denied that she was in arrears of rent and hence she was not liable to vacate the premises on the ground of arrears of rent. Ultimately, the defendant-tenant prayed for dismissal of the suit.

3.3. The learned trial Judge on appreciation and evaluation of the evidence adduced before him and considering the submissions advanced by both the parties, came to the conclusion that in the suit notice the plaintiff had demanded not only the arrears of rent but also municipal cess which also stipulated in the rent note and, therefore, the defendant was liable to pay municipal taxes also and hence a part of the rent cannot

be said to be paid every month and in these circumstances the case would not fall within the mischief of Section 12 (3) (a) of the Act but would fall within the definition of Section 12 (3) (b) of the Act. Since the defendant deposited the rent in the Court before the first date of hearing, no decree of eviction was required to be passed and on these findings the plaintiff was nonsuited by dismissing the suit for possession of the suit premises.

3.4. The plaintiff, feeling aggrieved by the said judgment and decree of the learned trial Judge, preferred Regular Civil Appeal No. 75 of 1978 before the District Court, Amreli and the learned Joint District Judge, on reappreciation and reevaluation of the evidence and considering the submissions advanced before him, recorded decree of eviction. The learned appellate Judge came to the conclusion that the learned trial Judge has very rightly held that the case would fall within the mischief of Section 12 (3)(b) of the Act. The learned lower appellate Judge also examined as to whether the case would fall within the provisions of Section 12 (3)(a) of the Act and ultimately reached to the conclusion that the case would also fall within the mischief of section 12 (3)(a) of the Act. In the net conclusion, the learned lower appellate Judge held that since the defendant-tenant failed to comply with the statutory provisions of the Act by not depositing the rent regularly in the lower court, no protection under section 12 (3)(b) of the Act would be available and ultimately he recorded the decree of eviction of the suit premises.

3.5. Aggrieved by the said judgment and decree recorded by the learned lower appellate Judge, the appellant/ original defendant-tenant has knocked the doors of this court by way of this Civil Revision Application under the provisions of Section 29 (2) of the Act.

4. It may be appreciated that this matter was placed for final hearing before this Court (Coram: K.G. Shah, J.) (as he then was) and after hearing the parties, the matter was referred to Larger Bench by this Court observing that the case was not covered under Section 12 (3) (a) of the Act but it was covered under section 12 (3) (b) of the Act. It was pointed out by the learned advocate appearing for the petitioner that since the word "regularly" has been deleted vide Amendment Act No. 7 of 1985 even if the tenant has not deposited the rent regularly she cannot be made liable to face a decree of eviction so long as she has deposited the rent in court and made good all the arrears at the time the decree is

sought to be passed. On the aforesaid submission of learned advocate for the petitioner-tenant a controversy arose at the bar whether the deletion of the word 'regularly' from clause (b) of sub-section (3) of Section 12 of the Act is retrospective in operation so as to require consideration in pending matters i.e., the matters pending at the time the Amendment Act No.7 of 1985 came to be enacted and was brought on the statute book.

5. In view of the above, this Court referred the matter to the Division Bench and the Division Bench of this Court (Coram: B.N. Kirpal, C.J. & S.D. Dave, J) (as they were) formulated the question as under:

"Whether the amendment brought in Section 12 (3)(b) of the Bombay Rents Act 1947 (Act LVII of 1947) by the Gujarat Act. No. VII of 1985, deleting or omitting word 'regularly', can be said to be retrospective or retrospective in operation? or the same is prospective only?"

6. The Division Bench of this Court after having heard learned advocates appearing for the parties and considering various case laws laid down by the Honourable Apex Court, answered the question by saying that the amended provisions including the deletion/omission of the expression "regularly" cannot be said to be retrospective in nature but are merely prospective in operation.

7. In view of the verdict of the Division Bench of this Court, the word "regularly" which has been deleted from Section 12 (3)(b) of the Act has no retrospective operation but has prospective operation, this matter has been listed for final hearing.

8. I have heard learned advocate Ms. Archana Amin for Mr. K.G. Sheth, learned advocate for the petitioner and learned advocate Mr. N.S. Desai for the respondent.

9. The first contention advanced by learned advocate Ms. Archana Amin for the petitioner is that notice under Section 12 (2) of the Act was not served upon the tenant by the landlord and since it was not received by the tenant personally decree of eviction cannot be passed under Section 12 (3)(b) of the Act as for passing decree either under any of the clauses of Section 12 (3) (a) or 12 (3) (b), notice under Section 12 (2) is a condition precedent. Learned advocate Mr. Desai for the respondent-landlord has assailed the aforesaid contention and submitted that notice was validly served upon the

tenant and in that behalf the learned trial Judge has made very categorical observation while recording the finding of issue No.5. On perusal of the judgment it is clear that the plaintiff has examined the postman at Ex.22. The defendant has examined herself and stated on oath that she was serving with BM Oil Mills at the relevant. The defendant has also examined her neighbour Santokben at Ex.30 and one Babulal at Ex.31. They have admitted in cross-examination that the defendant might be absent casually and the learned trial Judge refused to rely upon the evidence of the witnesses examined by the defendants. The learned trial Judge has relied upon the evidence of postman who happens to be a government servant who made endorsement of 'refusal' and therefore the learned trial Judge held that the notice was validly served upon the defendant/tenant. The learned lower appellate Judge has affirmed the said finding and observed that the notice was validly served. This concurrent finding of fact with respect to service of notice which is recorded on the basis of the evidence adduced before the Court cannot be permitted to be assailed in this revision.

10. The second contention advanced by Ms. Archana Amin is that though the tenant was paying rent regularly no receipt had been passed by the landlord in favour of the tenant and on this count also decree of eviction could not have been passed against the tenant. On perusal of the judgment and decree impugned, both the courts below have been consistently held that the tenant has neither paid rent nor she was careful in paying the rent and no evidence on behalf of the tenant was adduced to substantiate the case of non-passing of receipt by the landlord and in this view of the matter the second contention raised by learned advocate Ms. Archana Amin for the petitioner-tenant also fails and accordingly it is rejected.

11. In view of the aforesaid discussion, since the case of the tenant was pertaining to the period prior to the Amendment Act No.7 of 1985 came into being the tenant is not entitled to the benefit of statutory change of deletion of word 'regularly' appeared in Section 12 (3) (b) of the Act, she is not entitled to get the benefit thereof.

12. The learned lower appellate Judge has unequivocally held that the tenant has not deposited rent regularly and, therefore, she is not entitled to get protection under section 12 (3)(b) of the Act and hence decree of eviction will have to be passed against her and

consequently the decree of eviction was passed by him. In the premises, I am of the clear opinion that the judgment and decree of eviction of the suit premises recorded by the learned lower appellate Judge is in accordance with law and it does not call for any interference at the hands of this Court while exercising powers under Section 29 (2) of the Act but it requires affirmation of this Court.

13. No other point is canvassed before me.

14. In the net result, this revision application being devoid of merits deserves to be rejected and accordingly it is rejected. Stay against the impugned decree granted earlier shall stand vacated. Rule is discharged. There shall be no order as to costs.

(karan)